



# LIQUOR CONTROL DIVISION

## Frequently Asked Questions

### Liquor Representatives

The Department of Revenue (department) oversees liquor control in Montana by administering the Montana Alcoholic Beverage Code. Additionally, the department has adopted administrative rules that have the force and effect of law.

Montana laws and rules can be found online:

- Title 16 of the Montana Code Annotated (MCA) at [http://leg.mt.gov/bills/mca\\_toc/16.htm](http://leg.mt.gov/bills/mca_toc/16.htm)
- Title 42, Chapters 11, 12, and 13 of the ARM at [www.mtrules.org](http://www.mtrules.org)

If you have any questions with regard to these laws and rules, please contact the department at:

Liquor Control Division  
PO Box 1712  
Helena, MT 59624  
1-866-859-2254  
406-444-6900

In addition to state regulations, a licensee may also be subject to federal regulation under Title 27 of the Code of Federal Regulations (CFR). These regulations are administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB) which is a federal agency under the United States Department of Treasury.

The federal regulations can be found online:

- Title 27 of the CFR at <http://www.ttb.gov/other/regulations.shtml>

If you have any questions with regard to federal regulations, please contact the TTB at:

TTB Western II District Field Office  
40 Washington Avenue PMB #201  
Bremerton, WA 98337  
513-684-2491

The following information is intended to provide general guidelines and does not constitute legal advice. This information is not a substitute for a careful examination of the state and federal regulations or for seeking the advice of independent legal counsel. Furthermore, because the department does not administer federal regulations, any information provided with regard to such regulations is not to be relied upon in determining rights or obligations arising out of the Code of Federal Regulations. Questions on such matters should be referred to the TTB.

### **Tied House Rules**

#### **Q. What are tied house rules generally?**

A. State and federal law prohibit certain relationships between those engaged in the production, wholesale, and retail sale of liquor. The name “tied house” is derived from a common practice in England where a bar was “tied” – by ownership, contractual obligations, or other influences – to a specific producer. In some instances, that model encouraged intemperance in alcohol consumption, as retailers would offer generous favors to producers, such as expensive gifts, which added costs that needed to be recouped through aggressive product promotion. Tied houses were also subject to undue influence from producers who sometimes used their influence to force tied houses to sell their products to the exclusion of other producers’ products. As a result, after the repeal of prohibition in 1933, state and federal tied house laws were introduced.

#### **Q. What prohibitions are imposed by Montana law with regard to producers?**

A. Montana tied house rules prohibit producers from having a financial or ownership interest in a Montana alcoholic beverages retailer or a Montana distributor of alcoholic beverages, including a beer wholesaler, a table wine distributor, and an agency liquor store.

A prohibited undisclosed ownership interest is created when a person obtains an ownership interest in the license or business of a retailer or distributor when that person is not identified as the licensee by the department. An undisclosed ownership interest could be created by a producer undertaking numerous activities with regard to a retailer or distributor, including the following:

- owning some or all of the assets of the licensed business;
- sharing any portion of the profits or losses of the licensed business;
- assuming responsibility for any liabilities of the licensed business;
- possessing the right to control the location or ownership of a license; and
- possessing the authority to participate in business decisions for the licensed business such as the sale of the license, relocation of the license, and change or creation of any financial arrangement for loan repayment or funding sources.

A producer that obtains an undisclosed ownership interest in a retailer or distributor is subject to administrative action by the department, including license revocation.

For more information, please refer to 16-4-401, MCA, 16-4-406, MCA, ARM 42.12.106, ARM 42.12.143, and ARM 42.13.101.

**Q. What prohibitions are imposed by federal law with regard to producers?**

A. Federal tied house rules prohibit producers from inducing retailers to purchase the producer's products to the exclusion of another producer's products. In other words, regarding the sale of alcoholic liquor to retailers, federal law prohibits certain interference with competition through illegal inducement.

Such inducement can take a variety of forms, including, but not limited to:

- renting display space at a retail establishment;
- holding any interest in real or personal property owned, occupied, or used by the retailer in conducting the retailer's business;
- holding any interest in a retail license;
- paying for an advertisement placed by the retailer;
- furnishing, giving, renting, lending, or selling any equipment, supplies, money, service, or other things of value to the retailer (subject to some exceptions);
- paying or crediting the retailer for any advertising, display, or distribution service;
- guaranteeing any loan or the repayment of any financial obligation of the retailer; and
- requiring the retailer to take and dispose of a certain quota of any product.

There are numerous exceptions to the federal tied house statutes involving things of value that may be given to retailers. Such exceptions include, but are not limited to:

- product displays, so long as the total value of all product displays does not exceed \$300 per brand at any one time in any one retail establishment, and the displays contain conspicuous and substantial advertising matter on the product;
- point-of-sale advertising materials, such as posters, placard, designs, inside signs (electric, mechanical, or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus;

- consumer advertising specialties, such as trading stamps, non-alcoholic mixers, pouring racks, ashtrays, bottle or can openers, corkscrews, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotter, postcards, pencils, shirts, caps, and visors;
- samples, so long as the retailer has not purchased the brand from that producer within the last twelve months; and
- coupons and other direct offerings, subject to certain limitations.

For more information, please refer to:

- Title 27 CFR, part 6 at <http://www.ttb.gov/other/regulations.shtml>
- TTB Public Guidance at [http://www.ttb.gov/trade\\_practices/ttb-g-2011-3-tied-house-guidance.pdf](http://www.ttb.gov/trade_practices/ttb-g-2011-3-tied-house-guidance.pdf)
- TTB Industry Circular at [http://www.ttb.gov/industry\\_circulars/archives/2012/12-01.html](http://www.ttb.gov/industry_circulars/archives/2012/12-01.html)

### **Montana Liquor Representatives**

Q. What does a producer have to do in order to promote its product in Montana?

A. The producer must obtain a vendor permit from the department and employ a vendor representative that is registered by the department. The registered representative is referred to as a Montana Liquor Representative.

For more information, please refer to ARM 42.11.212 and ARM 42.11.213.

Q. Is there a limit to how many representatives a vendor can employ?

A. Yes. Montana limits the number of vendor representatives to five with the exception if the representative is a direct employee, an owner, or an officer of the distillery and is not employed through an independent contractor then the vendor may employ an unlimited number of representatives.

For more information, please refer to 16-3-107, MCA and ARM 42.11.211.

Q. Does a person have to meet certain qualifications in order to be a Montana Liquor Representative?

A. Yes. A Montana Liquor Representative cannot have an ownership interest in any Montana alcoholic beverage retail license or a state agency liquor store. Additionally, the representative must be 21 or older and must be a resident of Montana.

For more information, please refer to 16-3-107, MCA, and ARM 42.11.211.

**Q. Does the representative have to register with the department?**

A. Yes. A vendor seeking to promote product must do so through registered representatives. The vendor must also obtain a vendor permit pursuant to ARM 42.11.213. An electronic application and the registration fee must be submitted for each applicant seeking to represent a vendor. Please use the following link to register: <https://tap.dor.mt.gov/>. A vendor is not required to register individuals who only promote product at the distiller's licensed premises.

The annual registration fee for each vendor applicant is \$50.

The annual vendor permit fee is based upon the total number of cases the vendor sold to the department during the preceding fiscal year (July 1 to June 30), as follows:

- (a) 0-24 cases = no charge;
- (b) 25-100 cases = \$100;
- (c) 101-1,000 cases = \$200;
- (d) 1,001-2,000 cases = \$300; and
- (e) 2,001 or more cases = \$400

For more information, please refer to ARM 42.11.211 and ARM 42.11.213.

**Q. Does a Montana Liquor Representative need to renew their registration?**

A. Yes. All registrations expire on September 30 of each year. A Montana Liquor Representative seeking registration renewal must submit an electronic renewal application and the vendor representative registration fee on or before September 1 of each year. An electronic application and the registration fee must be submitted for each applicant seeking to represent a vendor. Please use the following link to register: <https://tap.dor.mt.gov/>.

The annual registration fee for each applicant is \$50. This fee must be paid when the applicant first seeks approval to represent a vendor and upon each renewal of the registration.

The annual vendor permit fee is based upon the total number of cases the vendor sold to the department during the preceding fiscal year (July 1 to June 30), as follows:

- (a) 0-24 cases = no charge;
- (b) 25-100 cases = \$100;
- (c) 101-1,000 cases = \$200;
- (d) 1,001-2,000 cases = \$300; and
- (e) 2,001 or more cases = \$400

For more information, please refer to ARM 42.11.211 and ARM 42.11.213.

**Q. What can a Montana Liquor Representative do to promote the vendor's product?**

A. Promoting is any activity that solicits product sales or contributes to the growth of products. This includes the dissemination of product information, providing

samples to retailers, and conducting tasting and sampling events for consumers. All such activities must be undertaken in accordance with state and federal guidelines.

For more information, please refer to ARM 42.11.105 and ARM 42.11.243.

### **Samples Provided to Retailers**

#### **Q. How does a Montana Liquor Representative obtain product samples?**

A. All sample products must be shipped to the department's liquor warehouse. In order for the Montana Liquor Representative to obtain these samples, the representative must submit a Sample Request (available at <http://www.revenue.mt.gov>) to the department at least seven days prior to the requested ship date. The samples are then shipped to an agency liquor store where the Montana Liquor Representative can purchase them. The posted price is \$12.00 per case.

For more information, please refer to ARM 42.11.243.

#### **Q. Does a Montana Liquor Representative need to maintain records documenting samples provided to retailers?**

A. Yes. The Montana Liquor Representative must maintain records of all samples provided to retailers.

For more information, please refer to 27 CFR § 6.81(b).

#### **Q. Are there limitations on which retailers can receive samples?**

A. Yes. Retailers are those that are licensed to sell liquor such as an all-alcoholic beverages licensee or agency liquor stores. A Montana Liquor Representative can only provide samples to a retailer who has not purchased that brand within the last 12 months.

For more information, please refer to 27 CFR § 6.91 and ARM 42.11.243.

#### **Q. Are there limitations on how much can be received?**

A. Yes. A retailer can only be provided with three liters of distilled spirits per year.

For more information, please refer to 27 CFR § 6.91 and ARM 42.11.243.

#### **Q. Are samples required to be in certain sizes?**

A. Yes. Samples must be in packaging that contains no more than 750 milliliters of product. If a vendor does not produce a product of that size, the next largest size may be used.

For more information, please refer to 27 CFR § 6.91 and ARM 42.11.243.

Q. Where can a retailer consume samples provided by a Montana Liquor Representative?

A. A retailer can consume samples on a premises licensed for the consumption of liquor, at a special event that is being catered by a licensee that is licensed to sell liquor, or on private property that is not otherwise licensed for alcohol consumption. Samples cannot be consumed at an agency liquor store.

For more information, please refer to ARM 42.11.243.

### **Consumer Tasting and Sampling**

Q. Where can a Montana Liquor Representative conduct a consumer tasting event?

A. A tasting event can occur on a premises licensed for the consumption of liquor or at a special event that is being catered by a licensee that is licensed to sell liquor. A tasting event may not be conducted in a non-licensed establishment such as a home.

For more information, please refer to 27 CFR § 6.95 and ARM 42.11.243.

Q. How does the Montana Liquor Representative acquire the product for the samples?

A. The Montana Liquor Representative may purchase the products to be used from the retailer for no more than the ordinary retail price. The product may also be acquired from an agency liquor store.

For more information, please refer to 27 CFR § 6.95 and ARM 42.11.243.

Q. What is a Montana Liquor Representative allowed to do at a consumer tasting event?

A. A Montana Liquor Representative can promote the vendor's product by allowing consumers to taste and sample the product.

For more information, please refer to 27 CFR § 6.95 and ARM 42.11.243.

### **Guidelines for Products**

Q. What guidelines are used to determine if a liquor product may be sold in Montana?

A. All products must be approved by the department prior to being accepted into the state liquor warehouse and subsequently sold to agency liquor stores. A picture of the product must be sent to the department in order to determine if it meets the department's inventory policy as referenced in ARM 42.11.402.

Products must be marketed in a responsible and appropriate manner. The department will not approve of any of the following:

- product that targets persons under the age of 21 or encourages irresponsible consumption of alcohol;
- product that blurs the distinction between an alcoholic and non-alcoholic product by utilizing labeling or primary packaging that emphasize features that are most commonly associated with non-alcoholic consumable products (such as alcohol in gelatin cups, aerosol cans, mason jars containing fruit, and hollow candies);
- product with flavors designed to target and appeal to underage persons such as bubble gum or cotton candy; or
- product requiring specialized handling such as freezing or refrigeration.

Q. How will you know if the product is approved for sale in Montana?

A. Approval or disapproval is communicated to the Montana Liquor Representative by a liquor distribution specialist via phone or email.

Q. Can a Montana Liquor Representative have liquor products shipped directly to them from the producer?

A. No. All products must be shipped to the department's liquor warehouse and then shipped to an agency liquor store. A Montana Liquor Representative must purchase their products from the agency liquor store.

Q. How can a vendor ensure there is inventory at the state warehouse when they are promoting new products?

A. A promotional agreement request form must be submitted to the department detailing the promotional strategy, the stores they plan to target and the number of cases requested for each product. The form is available at: <http://revenue.mt.gov/>. This agreement allows a vendor to maintain product(s) in the state liquor warehouse for six months. All product(s) must be available and bailed. The vendor is responsible for making arrangements and paying freight costs to have expired promotional products picked up from the state liquor warehouse within 30 days of the notice sent by the department. Future promotion requests may be denied if past promotions are expired and excess inventory is not removed from the state liquor warehouse.

Q. Can a Montana Liquor Representative place an order with the department on behalf of an agency liquor store?



A. No. A Montana Liquor Representative may not place an order for a product on behalf of an agency liquor store; all order requests must be received from the agency liquor store.